

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2637 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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SHRADHA PETROLIUM

Versus

COLLECTOR

Appearance:

MR BA SURTI for Petitioner

MR BY Mankad,AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 19/06/97

ORAL JUDGEMENT

Rule. Mr. B.Y.Mankad, learned AGP waives service of the Rule on behalf of the respondents. At the request of the learned Advocates, this petition is taken up for final hearing to-day.

The petitioner, by way of this petition, has challenged the order dated 24-7-92 at Annexure "B" passed by the Collector, Baroda which has been confirmed by the State Government vide its order dated 5-2-96 at Annexure "C" whereby the authorities have confiscated the goods worth Rs.2,22,061.90.

As can be seen from the allegations made against the petitioner, grounds Nos. 1 to 4 and 6 are not serious in nature and at the most can be treated as technical violations. The Supreme Court in the case of N.Nagendra Rao & Co. vs. State of Andhra Pradesh, AIR 1994, SC, 2663 has ruled that every contravention of the Act does not entail confiscation.

Allegation No.5 appears to be the main allegation

against the petitioner to which explanation has been given in para 11 of the petition. It appears that the Collector as well as the Appellate Authority have not considered Schedule II of Order 1990 and without making calculations on the said basis the authorities have declared that the present stock of the petitioner was not according to the stock register. The authorities are also required to take into consideration the variations of the quantity of petrol as well as diesel. The petitioner, in my opinion, has given proper explanation regarding the variations of the stock of the goods in question. Since the authorities have not appreciated allegation No.5, as explained in the petition, I am of the opinion that the Collector may reconsider his decision. Apart from that the confiscation of the seized goods worth more than Rs.2 lac as ordered also appears to be quite harsh. It is also required to be reconsidered. Apart from that, the Collector in paragraph 5 of his order has observed that in view of the difference in density the possibility of adulteration is not ruled out is also a fact which is taken into consideration which is beyond the scope of the notice given to the petitioner as there is no allegation regarding adulteration.

In light of what is stated hereinabove, the petition is partly allowed. The matter is remanded back to the Collector to take a fresh decision in the matter after affording a fresh hearing to the petitioner. Rule is made absolute to the aforesaid extent with no order as to costs.

Till the hearing and disposal of the case, the interim order passed by this Court shall continue.

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